

IN RE: PETITION FOR ZONING VARIANCE
N/S California Avenue, 187.88'
NE of Avondale Avenue
(3120 California Avenue)
14th Election District
6th Councilmanic District
Charles H. Birely, et ux
Petitioners

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 90-99-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit an existing open projection (carport) with a side yard setback of 1 foot in lieu of the required 7.5 feet, in accordance with Petitioner's Exhibit 1.

The Petitioners, by Charles Birely, appeared and testified. Also appearing on behalf of the Petition was a Mr. DelGaudio. Appearing as Protestants in the matter were: Mr. & Mrs. Charles Kus, adjoining property owners.

Testimony indicated that the subject property, known as 3120 California Avenue, consists of 0.131 acres zoned D.R. 5.5 and is improved with a single family dwelling. Petitioners recently completed construction of a carport, without benefit of a building permit, on the west side of the existing dwelling approximately 1 foot from the side property line. As a result of a complaint filed by the adjoining neighbor on the affected side, the Petitioners were advised the carport was in violation of the zoning regulations. Petitioners filed the instant Petition in order to legalize the carport, which is also enclosed on three sides.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

With reference to the above requirements, there was insufficient testimony and evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variance were denied. The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variance requested must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 27th day of September, 1989 that the Petition for Zoning Variance to permit an existing open projection (carport) with a side yard setback of 1 foot in lieu of the required 7.5 feet, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the subject carport be removed by no later than May 1, 1990. Petitioners shall contact the Zoning Enforcement Office within thirty (30) days of said removal to arrange for a mutually

- 2 -

convenient date and time for an inspection of the subject property to insure compliance with this Order.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:bjs

MICROFILMED

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1802.3.1.5. & 1802.3.1.6 & 301.1

To allow an open projection to extend into a side yard at 1' in lieu of the required 7.5'

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

7 1/2 Foot Side Yard Not Available

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:	Legal Owner(s):
(Type or Print Name)	Charles H. Birely
Signature	<i>Charles H. Birely</i>
Address	Margaret M. Birely
City and State	(Type or Print Name)
Attorney for Petitioner:	Signature
(Type or Print Name)	Address
Signature	City and State
Address	Name, address and phone number of legal owner, contract purchaser or representative to be contacted
City and State	Name
Attorney's Telephone No.:	Address
	Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 28th day

of September, 1989, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 30th day of Sept, 1989, at 2 o'clock P.M.

J. Robert Haines
J. Robert Haines
Zoning Commissioner of Baltimore County

(over)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: James Dyer
Zoning Supervisor

FROM: James Thompson
Zoning Enforcement Coordinator

SUBJECT: Item No. 558 (If known)
Petitioner: Birely (If known)

VIOLATION CASE # C-89-1442

LOCATION OF VIOLATION 3120 California Avenue
DEFENDANT Charles & Margaret Birely ADDRESS Baltimore, MD 21234

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME	ADDRESS
Charles Kus, Sr.	3118 California Avenue Baltimore, MD 21234

After the public hearing is held, please send a copy of the Zoning Commissioner's order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

August 8, 1989

NOTICE OF HEARING

Dennis F. Rasmussen
County Executive

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 108 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Zoning Variance
CASE NUMBER: 90-99-A
N/S California, 187.88' NEly from Avondale
3120 California Avenue
14th Election District - 6th Councilmanic
Petitioner(s): Charles H. Birely, et ux
HEARING SCHEDULED: WEDNESDAY, SEPTEMBER 20, 1989 at 2:00 p.m.

Variance: To allow an open projection to extend into a side yard at 1 foot in lieu of the required 7.5 feet.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines

J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

cc: Mr. & Mrs. Birely
Charles Kus, Sr.
File

CERTIFICATE OF PUBLICATION

August 29, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in the NORTHEAST TIMES BOOSTER and the NORTHEAST TIMES REPCETER, weekly newspapers published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on August 24, 1989.

THE JEFFERSONIAN
NORTHEAST TIMES BOOSTER and the
NORTHEAST TIMES REPORTER

S. Zehe Orlean
Publisher

PO 16234
NY M34137
cs 90-99-A
prio \$74.86

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 14th Date of Posting: 9/1/89

Posted for: Volunteer

Petitioner: Charles H. Birely, et ux

Location of property: N/S California Ave, 187.88' NEly from Avondale

3120 California Ave

Location of Sign: Facing California Ave, approx 7' from road

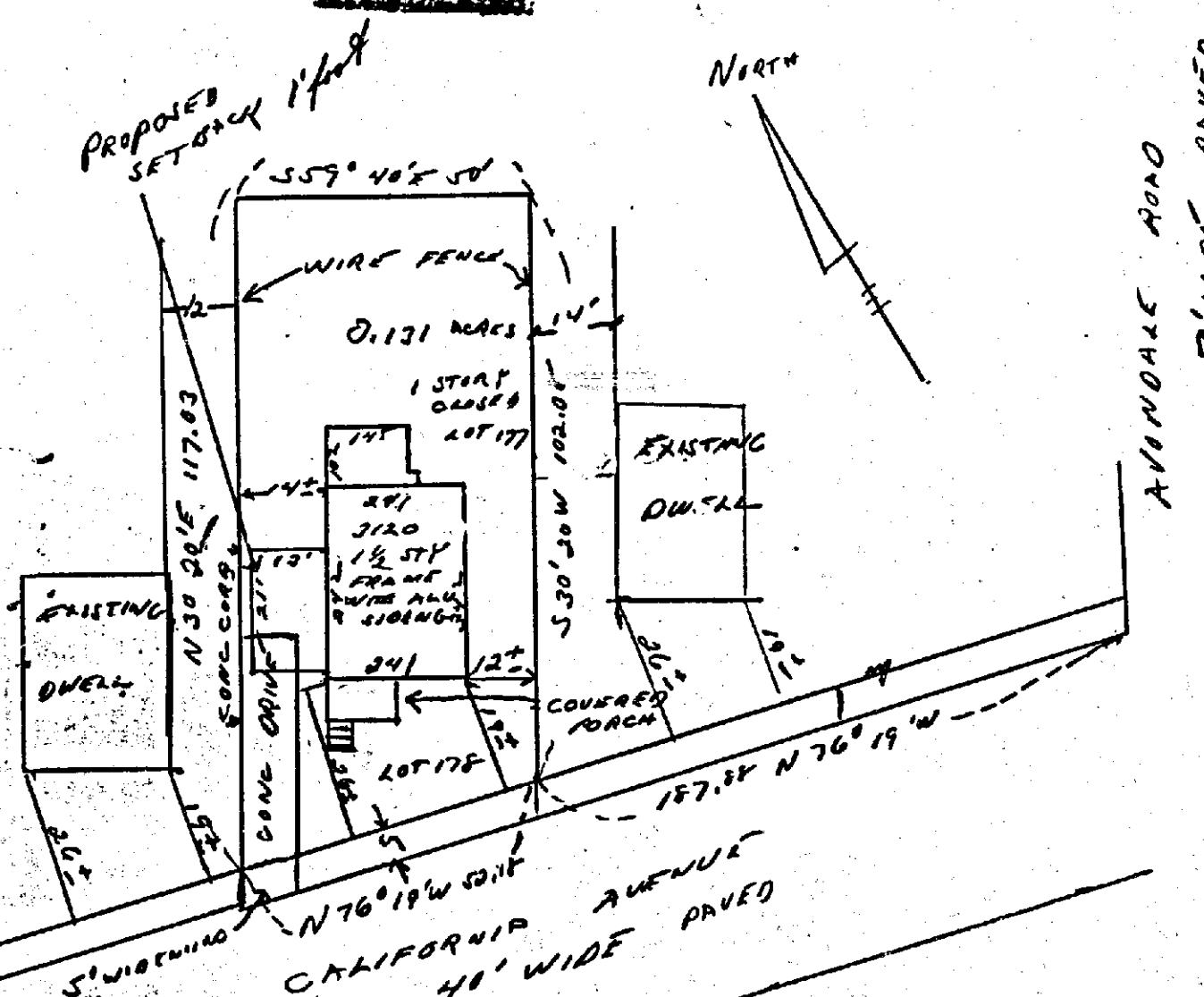
on property of Petitioner

Remarks:

Posted by: M. Haines Date of return: 9/5/89

Number of Signs: 1

PETITIONER'S EXHIBIT 1



Part of Zoning Variance
Over Charles & Margaret Birely
District 14 (2nd MS DIST)
Designated as Part of 177177
As shown on plat of Birely, above
Recorded on Plat Book WPC 57/14
Sheet 12 to 14

Baltimore County
Fire Department
800 York Road
Towson, Maryland 21204-2536
(301) 887-4500
Paul H. Reincke
Chief

JUNE 26, 1989

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204



Dennis F. Rasmussen
County Executive

RE: Property Owner: CHARLES H. BIRELY

Location: NS CALIFORNIA

Item No.: 558 Zoning Agenda: JUNE 27, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: *Cap Wm Brady* Noted and Approved
Planning Group Fire Prevention Bureau
Special Inspection Division

JK/KEK

JUN 27 1989

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BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner

DATE: September 8, 1989

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Charles H. Birely, Item 558
Zoning Petition No. 90-99-A

The petitioner requests a variance to allow an open projection to extend into a side yard beyond the required 7.5 feet. In reference to this request, staff offers no comment.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

PK/JL/sf

9/11/89 mailed copy - received late

MICROFILMED

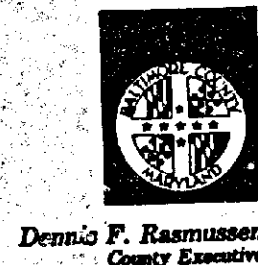
SEP 11 1989

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
(301) 887-3554

July 24, 1989

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, MD 21204

RECEIVED
AUG 3 1989



ZONING OFFICE

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 525, 526, 527, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 557, and 559.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate II

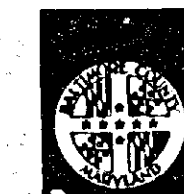
MSP/lab

MICROFILMED

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

DATE 9-6-89



Dennis F. Rasmussen
County Executive

Mr. & Mrs. Charles H. Birely
3120 California Avenue
Baltimore, Maryland 21234

Re: Petition for Zoning Variance
CASE NUMBER: 90-99-A
NS California, 187.88' NEly from Avondale
3120 California Avenue
14th Election District - 6th Councilmanic
Petitioner(s): Charles H. Birely, et ux
HEARING SCHEDULED: WEDNESDAY, SEPTEMBER 20, 1989 at 2:00 p.m.

Dear Mr. & Mrs. Birely:

Please be advised that \$99.86 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 074423
DATE 7/26/89 ACCOUNT R-001-615-000
AMOUNT \$99.86
RECEIVED FROM Charles H. Birely et ux
FOR 7/26/89 hearing (see 90-99-A)
9394*****99866* 4208F
VALIDATION OR SIGNATURE OF CASHIER

Beginning for the same on the northerly side of California Avenue at a point distant, 187.88 feet measured north 76 degrees 19 minutes west along the northerly side of California Avenue from the corner formed by the intersection of said side of said avenue with the northwest side of Avondale Avenue as laid out on a Plat of Ridge Grove and recorded among the Plat Records of Baltimore County in Plat Book W.P.C. No. 5 folio 84 etc.; running thence and binding on the northerly side of California Avenue 76 degrees 29 minutes west 52.13 feet; thence leaving the avenue and running for the following three lines of division now made, viz: north 30 degrees 20 minutes east parallel with Avondale Road 122.25 feet and south 59 degrees 40 minutes east parallel with the division line between Lots Nos. 176 and 177 on said plat 50 feet and south 30 degrees 20 minutes west also parallel with Avondale Road 107.30 feet to the place of beginning. Containing 0.131 of an acre of land more or less, according to survey of William M. Maynard, County Surveyor, dated May 6, 1955. Being a part of Lots 171 and 178 laid out on the aforesaid Plat of Ridge Grove. The improvements thereon being known as No. 3120 California Avenue.

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